

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DARREN CHIACCHIA and
INDEPENDENCE FARM, LLC,

Plaintiffs,

v.

DECISION AND ORDER
11-CV-837

CHARLOTTE SCHITKEDANZ,
THOMAS NOWASKY, and
GALTEN FARMS LTD,

Defendants.

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. §636(b)(1), on December 1, 2011. Defendants filed a motion to dismiss the complaint based upon lack of jurisdiction, lack of proper service, improper venue, *forum non conveniens*, failure to state a claim upon which relief may be granted, and abstention. On June 22, 2012, Magistrate Judge Schroeder filed a Report and Recommendation recommending that defendants' motion to dismiss the complaint based upon lack of jurisdiction, lack of proper service, improper venue, *forum non conveniens* and abstention be denied in its entirety (Dkt. No. 29). With respect to defendants' argument that the complaint be dismissed as to defendants Charlotte Schickedanz and Thomas Nowaskey, pursuant to Federal Rule of Civil Procedure 12(b)(6), because there is

no basis for individual liability, Magistrate Judge Schroeder recommended that plaintiffs be afforded an opportunity to amend the complaint to add specific factual allegations so as to allege individual liability of defendants Schickedanz and Nowaskey.

On July 6, 2012 defendants filed objections to the Magistrate Judge's Report and Recommendation (Dkt. No. 30). Plaintiffs filed a response on July 27, 2012 (Dkt. No. 32). Defendants replied to plaintiffs' response on August 3, 2012, (Dkt. No. 33), and the Court deemed the matter submitted.

Pursuant to 28 U.S.C. §636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon a *de novo* review, and after reviewing the submissions from the parties, the Court hereby adopts Magistrate Judge Schroeder's recommendation to deny defendants' motion to dismiss the complaint based upon lack of jurisdiction, lack of proper service, improper venue, *forum non conveniens*, failure to state a claim upon which relief may be granted, and abstention. The Court also adopts Magistrate Judge Schroeder's recommendation that plaintiffs be afforded an opportunity to amend the complaint to add specific factual allegations so as to allege individual liability of defendants Schickedanz and Nowaskey.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, defendants' motion to dismiss the complaint is

denied in its entirety. Plaintiffs are granted leave to file an amended complaint with respect to claims against individual defendants Schickedanz and Nowaskey on or before March 20, 2013. This matter is referred back to Magistrate Judge Schroeder for further proceedings.

SO ORDERED.

s/ Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: February 20, 2013